

**Zoning Board of Appeals  
Minutes  
May 2, 2022**

A meeting of the Zoning Board of Appeals (ZBA) was held in person at 380 Great Road, Stow and via the zoom Web Conferencing Service on May 2, 2022 at 7:00 pm.

Present: Mark Jones, Ernest Dodd, David Hartnagel and Andrew DeMore

Associate Members: Leonard Golder, Michael Naill, Andy Crosby and William Byron

Absent: Associate Member: Ruth Kennedy Sudduth

The Meeting was called to order at 7:00 pm.

**Voting Associate Member** - Chairman Mark Jones designated Associate Member William Byron as a voting Associate Member for purposes of this meeting.

**Member Updates**

Mark Jones updated the Board on the recent legislature for multi-family housing in MBTA Communities. Stow is designated as an MBTA Community. Leonard Golder noted that the Planning Board sent a letter voicing concerns about the density requirement in the proposed regulations, due to lack of infrastructure (water and sewer) in communities such as Stow.

Mark Jones said he hopes to hold a public hearing to review the South Acton Road Kennel Permit. Karen Kelleher said she contacted the Kennel owner who advised she is not available for the June meeting, therefore the hearing will be scheduled for the July 11, 2022 meeting.

Mark Jones said we are expecting a Comprehensive Permit (Chapter 40B) Application and noted it would be helpful if all the associate members are in attendance at the public hearing so someone will be able to step in in the event a full member is not available for all sessions of the Public Hearing.

**Public Hearing Continuance – 206 Barton Road (Volume III, Page 848-1)**

The Public Hearing continuance from March 14, 2022 to consider and Application for Modification of a Special Permit to allow modifications to the plan for a single-family dwelling on a re-existing non-conforming lot at 206 Barton Road was called to order.

Tim Hess of Insitu Architects, Inc., representing the Applicant presented a new survey plan. He explained the reason for the new plan is they found trouble with the previous plan. They identified two places on the north and south boundary where construction came closer to the boundary. The new plan improves the north boundary where the maximum setback was 2.1 feet, and the new plan is 3.1 feet. The south side maximum setback was 4.8 feet, and the new plan is 5.8 feet.

Ernest Dodd questioned why the Building Commissioner couldn't issue a building permit because the new plan is within all the bounds of the previous plan. Karen Kelleher noted that Building Commissioner referred it back to the ZBA because the original permit noted they are building on the same foundation

footprint, and it appeared that certain sections of the proposed dwelling would be slightly closer to the abutting property. Tim Hess explained that the request has to do with small dimensional adjustments to use dimensional construction rather than the field stone foundation. It is no longer accurate to say it is on the same footprint.

***David Hartnagel moved to close the hearing.***

*William Byron asked for clarification of the 2.1-foot and 3.1-foot setback. It was noted that the structure is now closer to the home next door than the original footprint. The 3.1-foot set back is measured from the deck which is the maximum setback.*

*Mark Jones noted that rear deck extends further into the rear yard setback.*

*Tim Hess noted that the proposed dwelling is slightly closer to the northerly property line because the house isn't centered parallel to the frontage. What was discussed at the last meeting is the maximum setback which is 3.1 feet. He noted the proposed deck is no closer to the rear property line than the previous plan – approximately 30.6 feet.*

*William Byron said the proposed change appears to fit the rules as to the maximum setback. He said the building itself is closer to the lot line and adjacent home, which is his concern.*

*Leonard Golder said basically it is not much different than the previous plan. He thinks it is acceptable.*

*Mark Jones asked if the Board is likely okay with the increased encroachment. Members responded yes.*

*Andrew DeMore said where it was left at the last meeting, the Board wanted to see a survey plan.*

***The motion to close the public hearing was seconded by Andrew DeMore and carried by a unanimous vote in favor (Mark Jones, Ernest Dodd, Andrew DeMore, David Hartnagel and Associate Member William Byron).***

**Deliberations – 206 Barton Road**

Leonard Golder said he thinks the modified plan is acceptable. It is not a great increase. Members agreed that the increase is negligible.

David Hartnagel asked if any of the abutters voiced concern. Karen Kelleher said the abutter to the north was present at the public hearing on the original plan and voiced support. No abutters attended the public hearing sessions for the modified plan.

It was noted that the applicant will need to go back to the Conservation Commission.

***Ernest Dodd moved to Grant the Special Permit Modification for 206 Barton Road. The motion was seconded by David Hartnagel and carried by a vote of 5 members in favor (Mark Jones, Ernest Dodd, Andrew DeMore, David Hartnagel and Associate Member William Byron).***

The Board will review a draft decision at the next meeting.

## **DELIBERATIONS – 102 GREAT ROAD (Appeal of Building Commissioner’s Decision) (Volume III, Page 856)**

Members were presented with a Draft Decision.

Mark Forgues and Katie Fisher were present for the discussion.

Katie Fisher said there was a mistake on her original application and didn’t want it repeated on this decision. She noted the original application was for 102 Great Road and the draft decision says 84-92 Great Road. Mark Forgues said the application form says 92-102 Great Road. Karen Kelleher confirmed that the application form says 102 Great Road.

Katie Fisher noted that at the last meeting, the Board was not going to include anything other than what was indicated in the vote and the draft includes findings that were not part of the vote. Karen Kelleher noted that the Board is seeing the draft decision for the first time and had no input on it. The section on grandfathering was included in the draft because the information was attached to the application form, and she wanted the Board to discuss whether it should be addressed in the decision.

Katie Fisher questioned why the findings from the 2017 decision were included in the decision and if they reflect the exact language from the decision.

Mark Forgues noted the owner’s address is listed as 102 Great Road. Karen Kelleher will clarify the address relative to the owner and reference the owner’s Acton address.

Mark Forgues also questioned the section regarding grandfathering noting that there was a lot of discussion in deliberations about this and at the last meeting it was decided that the decision would only address two issues (Class II licenses and Discontinuance or Abandonment). Karen Kelleher noted that is the reason that section is highlighted - so the Board would have the opportunity to discuss the issue and decide if it should be included. Mark Forgues said basically the board deliberated and took a vote. As far as he is concerned that section should not be included. Mark Jones it is up to the board to review the decision.

Members reviewed the draft decision text.

Address – Members discussed the confusion about the address referenced on the Application Form and public hearing notice vs. the Building Inspector’s letter and correspondence attached to the Application Form. Mark Jones said it is his inclination that all the parcels should be referenced. Andy DeMore said the Decision should be specific to what the application says. It was noted the Building Commissioner’s decision references 84-102 Great Road. The single-family dwelling is 84 Great Road. There needs to be clarity to whoever is reading the decision.

It was questioned if the application is legally noticed because it referenced 102 Great Road. Karen Kelleher noted the Notice of Public Hearing references 102 Great Road but also references the Assessors Property Map and Parcels which includes 84-92 Great Road – all as indicated on the application form.

Katie Fisher said she is concerned that some abutters may not have been notified. Karen Kelleher noted that abutters to 84-92 Great Road were notified as that is what was included in the Certified List of Abutters. Katie Fisher said she is concerned that when abutters read the notice, they might have thought it was just for 84 Great Road, which is the house. She also noted the Assessor's Certified List is not always correct.

Members agreed that the Decision title and footer should reference 102 Great Road as indicated on the Application Form and the Decision should reference 84 and 92 Great Road as the premises affected.

Members agreed that it should be noted that William Byron was a full member during the public hearing and had since resigned and designated as a Voting Associate Member for purposes of deliberating on the decision.

Finding 1– Members agreed that the date of the applicant's request and the Building Commissioner's Decision should be clarified. The address noted should be 84-102 Great Road as indicated in the Building Commissioner's decision.

Finding 2 – Members agreed to clarify the 2017 appeal is in Land Court.

Finding 3 – Members agreed to remove the third bullet (Grandfather Protection)

Finding 5 - Katie Fisher questioned the reference to the 2017 findings and noted concern that if they may not be verbatim from the 2017 decision. She wants to make sure it matches the language exactly to avoid the need for her to involve her attorney. Karen Kelleher will check the text against the 2017 Decision.

David Hartnagel questioned if those findings need to be restated. He said the only potential downside is someone could question why those sections were referenced and not others. Karen Kelleher noted that she thought those sections were the most relevant and included them for the Board to decide. Some members noted the references should be included as it gives clarity to this particular appeal.

Katie Fisher is concerned that it might not be exactly as written in the original Decision. Mark Forgues noted the Board did not deliberate on any of those items. Mark Jones said the Board did deliberate on the continuity and uses and the draft supports that fact that we referred to the 2017 Decision.

Members discussed if the 2017 references should be included in the decision as drafted or as an addendum. Leonard Golder said prefers to leave it, as it is better to provide more rationale.

Mark Forgues again noted that the Board did not deliberate on those issues. David Hartnagel and Mark Jones said the draft does not say the Board deliberated on the 2017 decision. Andrew DeMore said clarity is more important as long as it is concise and clear and eliminates any ambiguity. Andy Crosby said, in that sense, it makes sense to leave the references in the decision.

Members agreed to change the sentence: “The Board supports the November 16, 2017 decision, currently under appeal, which states in part:” to read “The Board confirms the November 16, 2017 decision, currently under appeal in Land Court. Certain relevant sections are noted below.”

Katie Fisher said she doesn’t like the way this section is written. She said it is not correct and is in contradiction to the 2017 decision. Without knowing it is the exact language, the Board should not approve it. She doesn’t want to hire an attorney. This will cause her to call her attorney. Mark Jones said they are findings of facts that were in the decision. Katie Fisher said the buses and landscapers were not part of the 2017 Decision. Mark Jones said it is just reciting the finding in the decision. Mark Forgues said the problem is you are reciting the section on buses and boats, etc. Katie Fisher agreed they should not be included because it will cause another case and she doesn’t want to cause another appeal. Mark Forgues again argued that the Board did not deliberate on this. Mark Jones said this is not deliberation, it is just a recital of what was in the decision.

Finding 6 Grandfather Protection – Karen Kelleher noted this section is highlighted because it was noted in a memorandum attached to the Application Form. Although it wasn’t included in the Board’s vote, she wanted the board to have the opportunity to discuss whether it should be included.

Members agreed to remove Finding 6 from the draft decision.

***Ernest Dodd moved to approve the Draft Decision for 102 Great Road as amended. The motion was seconded by David Hartnagel and carried by a vote 5 members in favor (Mark Jones, Ernest Dodd, Andrew DeMore, David Hartnagel and Associate Member William Byron).***

Mark Forgues and Katie Fisher said they appreciate what the Board does.

#### **Nonconforming Lots –**

Mark Jones reported that he chatted with Town Planner, Jesse Steadman about potential zoning amendments related to pre-existing non-conforming lots. Mark Jones also noted, although this issue should be addressed, the sense of urgency is diminished since the ZBA’s meeting with the Building Commissioner and his new policy. He noted that the Town Planner suggested it might be appropriate to address this issue as part of the Master Plan update.

Andrew DeMore said he thinks it is an important issue to address noting that Building Commissioners change over time.

Ernest Dodd said he spent some time going through Section 4 of the Zoning Bylaw and drafted a proposal to make every lot, if it was conforming when created, remain conforming throughout its life. He noted there are a few lots around the lake that are different because they were there before zoning. He will circulate his proposed changes.

Mark Jones explained the map prepared by Malcolm Ragan, Assistant Town Planner/GIS Administrator, which indicated lots less than 0.5 acres; 0.5 acres – 40,000 sq. ft.; and 40,000 sq. ft -1.5 acres. Mark

Jones said it is his idea to downzone certain areas such as the Circuit Drive and Harvard Acres developments which are primarily 40,000 sq. ft. lots.

Ernest Dodd said he feels if a lot was conforming when the lot was registered and met all of the frontage and setback requirements at that time, it should be conforming forever and the requirements in effect at the time should apply. Karen Kelleher said she is concerned that scenario would be labor intensive for the Building Department to have to make those determinations. Ernest Dodd said it would be up to the applicant. Karen noted it would also be labor intensive for the applicant. Katie Fisher said she thinks it is a good idea and noted it is not hard to find the information. She does it all the time. It was noted that some of the information is available from the Assessor's Office. Mark Jones noted the map was based on the Assessor's database.

Karen Kelleher asked Ernest Dodd if his intent is to apply to setback requirements to those that were in place when the lot was created. Ernie responded yes. Karen Kelleher noted that at some point there was no setback requirement. She would not support a 0.0 ft. setback.

Mark Jones asked Ernest Dodd if when someone merges two lots and wants to separate them, what would be the guidance. Ernest Dodd said the present standards would apply because it would be considered a new lot.

David Hartnagel asked if Ernest Dodd is saying if you have a lot created in 1950 and purchase an abutting ¼ acre lot today, the new lot is what you go by. Mark Forgues said if you had an acre lot with a house on it you would just have your house with an extra ¼ acre.

David Hartnagel asked if the point is to reduce the number of applications to the Zoning Board of Appeals.

Ernest Dodd said he would propose that the lots along Lake Boon that were all created long before the Zoning Bylaws were adopted would still be non-conforming.

Mark Jones said he thinks, if there were different residential districts it would be simplified as you would have one place to refer to.

Ernest Dodd said with his proposal, it would save residents the cost of having to come before the ZBA. Mark Jones noted that, under current Building Commissioner's policy and current court cases, most don't have to come before the ZBA, noting the urgency is no longer an issue.

Karen Kelleher noted, to Andy DeMore's point, she has seen over the years that the policy sometimes changes with a new Building Commissioner.

#### **Kennels –**

Mark Jones said he would also like to review the Zoning Bylaw for Kennels. Karen Kelleher noted there are conflicts between the Zoning Bylaw and Board of Health Regulations.

**Comprehensive Permit Regulations** – Mark Jones said he would like the Board to look at the Comprehensive Permit Regulations and noted the lack of compliance with the Villages at Stow Permit regarding regular reporting on financial requirements. The State also requires regular reporting. He is inclined to include that requirement in the regulations. Katie Fisher noted that residents at the Villages at Stow were taken to the cleaners, they had to do major reconstruction that should have been done by the developer. The fees went up dramatically by the Homeowners Association who had to borrow funds to make repairs.

Mark Jones said he will distribute regulations from other towns. Karen Kelleher will distribute the State Guidelines.

**84-92 Great Road Appeal of Zoning Board of Appeals decision.**

***Ernest Dodd moved to accept the Application to withdraw the appeal filed with the Zoning Board of Appeals on the Special Permit for a carport. The motion was seconded by Andrew DeMore and carried by a vote of 5 in favor (Mark Jones, Ernest Dodd, Andrew DeMore, David Hartnagel and Associate Member William Byron).***

**Adjournment**

The Meeting adjourned at 9:22 pm.

Respectfully Submitted,

Karen Kelleher